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## BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

KRISTIN K. MAYES, Chairman 703 210 52 00 10 30  
 GARY PIERCE  
 PAUL NEWMAN  
 SANDRA D. KENNEDY  
 BOB STUMP

W-02304A-09-0575

IN THE MATTER OF THE APPLICATION )  
 OF COMMUNITY WATER COMPANY OF )  
 GREEN VALLEY FOR A DETERMINATION )  
 THAT THE 'AGREEMENT FOR PAST CAP M&I )  
 WATER SERVICE CAPITAL CHARGES )  
 (INSTALLMENT)' WITH CENTRAL ARIZONA )  
 WATER CONSERVATION DISTRICT IS NOT AN )  
 EVIDENCE OF INDEBTEDNESS REQUIRING )  
 COMMISSION APPROVAL UNDER A.R.S §§ 40- )  
 301 AND 40-302; OR, IN THE ALTERNATIVE, )  
 APPROVAL OF THAT AGREEMENT. )

DOCKET NO. W-02304A-09-\_\_\_\_\_

Arizona Corporation Commission  
**APPLICATION**  
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Community Water Company of Green Valley ("CWCGV") hereby submits its application regarding the Agreement For Payment of Past Capital M&I Water Service Capital Charges (Installment) (hereinafter referred to as the "Agreement") it entered into on November 21, 2007. CWCGV seeks a determination that the Agreement is not an evidence of indebtedness and does not require Commission approval under A.R.S. §§ 40-301 and 40-302. In the alternative, CWCGV requests approval of the Agreement as being in the public interest and providing CWCGV an additional dependable, renewable and long-term supply of water. In support of its Application, CWCGV provides the following:

1. In Decision No. 71259 (September 3, 2009), the Commission approved a condition that ordered CWCGV to file an Application regarding the necessity of Commission approval for an agreement between it and the Central Arizona Water Conservation District ("CAWCD") for past Central Arizona Project ("CAP") Municipal and Industrial ("M&I") water service capital charges (hereinafter referred to as "Agreement"). The Agreement, attached as Exhibit A to this Application, provides for payment in five equal installments of \$222,994.93 starting December 1, 2007 and ending December 1, 2011.

2. CWCGV originally received 1,100 acre-feet of CAP water through its original subcontract with CAWCD on March 11, 1987 titled "Subcontract Among the United States, the [CAWCD] and [CWCGV], Providing for Water Service, Central Arizona Project".<sup>1</sup> Upon acquiring the Certificate of Convenience and Necessity ("CCN") of New Pueblo Water Company in Decision No. 60082 (February 20, 1997), CWCGV acquired an additional 237 acre-feet of CAP water.

3. CWCGV participated in a process that started in 1994 to reallocate a total of 65,647 acre-feet of uncontracted M&I CAP water. The Company did so because the 1,337 acre-feet allocation would be insufficient to meet current and future demands. On December 2, 1999, Arizona Department of Water Resources ("ADWR") issued a letter to the United States Department of Interior ("U.S. DOI") recommending reallocation – including an additional 1,521 acre-feet to CWCGV. The letter explained the critical need for M&I water among municipal providers, the need for a dependable and renewable water supply, and the need to lessen dependence on finite groundwater supplies.<sup>2</sup> CWCGV, seeing that need to procure renewable water supplies, was one of 53 applicants and one of 20 recipients of additional CAP water allocation.

4. CAWCD must ultimately repay to the U.S. DOI capital charges associated with construction of the CAP. As part of the reallocation process, CWCGV was willing to subcontract for additional CAP water and commit to paying the past capital repayment obligation for that water.<sup>3</sup> The Agreement at issue between CWCGV and CAWCD covers these past CAP M&I water service capital charges. In order for CWCGV to receive the additional 1,521 acre-feet allocation of CAP water, it must pay these capital charges.

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<sup>1</sup> Contract No. 07-07-30-W0151.

<sup>2</sup> See Letter from Rita P. Pearson, ADWR Director, to Bruce Babbitt, Secretary of the Interior (December 2, 1999) available at <http://www.cap-az.com/includes/media/docs/ADWR-reallocation-recommendation-1-2002.pdf> (last visited on December 17, 2009). This letter was attached to a letter dated January 20, 2000 between the same individuals confirming the recommended allocations from ADWR to U.S. DOI.

<sup>3</sup> Id.

5. The 1,521 acre-feet reallocation of previously un-contracted M&I water to CWCGV was confirmed in the Arizona Water Settlements Act of 2004 ("AWSA").<sup>4</sup> In accordance with the AWSA, U.S. DOI published in the Federal Register its Final Decision of CAP Water Reallocation.<sup>5</sup>

6. On May 25, 2007, CWCGV entered into an amended subcontract with CAWCD as required under and in accordance with Section 104(d) of AWSA (hereinafter referred to as the "Subcontract" and attached as Exhibit B).<sup>6</sup> The Subcontract, while separate from the Agreement at issue, highlights the need provide for repayment of the cost of constructing the CAP pursuant to Section 304(b)(1) of the Colorado River Basin Project Act.<sup>7</sup> The Subcontract notes that the U.S. DOI and CAWCD entered into a Contract No. 14-06-W-245, Amendment 1, dated December 1, 1988 (i.e. the "Repayment Contract") where CAWCD repays reimbursable costs of the CAP allocated to it. The Repayment Contract is part of the Subcontract; and the Subcontract is considered a subsidiary to the master contract providing for repayment of CAP costs. The United States, through the Regional Director of the Lower Colorado Region of the Bureau of Reclamation, was a party to the Subcontract between CAWCD and CWCGV.

7. In order for the Subcontract to become effective (and for CWCGV to receive the additional allocation), three events must occur:

- (1) CWCGV seeking validation of the Subcontract in a court of competent jurisdiction as required in Article 6.12 of the Subcontract. On August 30, 2007, CWCGV did file its petition for validation of the Subcontract in accordance with state and federal law – and before the Pima County Superior Court. The Subcontract was ratified, confirmed and validated by order on November 15, 2007.<sup>8</sup> The Subcontract was approved as required and in accordance with state law governing CAWCD.<sup>9</sup> It is no longer subject to review.<sup>10</sup>

<sup>4</sup> Pub. L. 108-451, § 104(b) (1), 118 Stat. 3478, 3489 (codified as amended at 43 U.S.C.A. § 1501 note) (enacted December 10, 2004).

<sup>5</sup> Central Arizona Project (CAP), Arizona; Water Allocations, 71 Fed. Reg. 50449 – 50452 (August 25, 2006).

<sup>6</sup> Subcontract No. 07-XX-30-W0489.

<sup>7</sup> Pub. L. 90-537, 82 Stat. 885, 891 (1968) (codified as amended at 43 U.S.C.A. § 1523) (enacted September 30, 1968).

<sup>8</sup> Pima County Super. Ct., No. C2007-4994.

<sup>9</sup> See A.R.S. §§ 48-3731 through 48-3734.

(2) U.S. DOI, through its Secretary, publishing a statement of findings as required in Section 207(c) (1) of the AWSA. It did so on December 14, 2007.<sup>11</sup>

(3) CWCGV providing payment of past M&I water service capital charges in accordance with the Federal Reclamation Laws.<sup>12</sup> The Agreement at issue in this Application is regarding this last item.

8. CWCGV, in accordance with federal law and per the terms and conditions of the Subcontract, must pay for past CAP M&I capital charges in order to acquire the additional 1,521 acre-feet of CAP water. It had two choices to do so – either (1) pay one lump-sum payment; or (2) make five installment payments of \$222,994.93 starting December 1, 2007 and ending December 1, 2011. CWCGV chose the latter option. The Agreement was entered into November 21, 2007. In doing so, CWCGV advanced the public policy goal of lessening the dependence on groundwater sources and procuring renewable sources of water. Attached to this Application as Exhibit C is a letter from the CAP corroborating the fact that CWCGV must have provided for payment of past M&I water service capital charges in order to receive the additional 1,521 acre-feet allocation.

9. While interest factored into determining the amount of the installments, the installments are simply five payments of \$222,994.93. More importantly, CWCGV understands that it faces no risk if it were to stop making payments under the Agreement. It would lose its right to the additional 1,521 acre-feet of CAP water, but no other assets of CWCGV would be encumbered if it were to cease making payments. CWCGV would also be reimbursed for any payments it made if it decided to relinquish its right to the additional acre-feet of allocation – as indicated in the document entitled “CAWCD Policy Regarding the Relinquishment and Transfer of CAP M&I Subcontract Allocations Within the CAP Service Area” (attached as Exhibit D).

<sup>10</sup> See A.R.S. § 48-3734.

<sup>11</sup> Statement of Findings: Gila River Indian Community Water Rights Settlement Act of 2004, 72 Fed. Reg. 71144 (finding also that, in accordance with Sections 104(b) and (d) of the AWSA, 65,647 acre-feet of contracted CAP M&I water has been reallocated and that subcontracts for delivery have been offered.)

<sup>12</sup> This includes the Boulder Canyon Project Act, Pub. L. 70-642, 45 Stat. 1057 (1928); Reclamation Project Act, 53 Stat. 1187 (1939); Colorado River Basin Project Act, Pub. L. 90-537, 82 Stat. 885 (1968); and Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3478 (2004), all as amended.

10. CWCGV classified the obligation as long-term debt because that classification was more conservative than other possible approaches, and it was more transparent to the auditors of those statements. The Agreement, however, remains a no-risk obligation to CWCGV in exchange for the ability to acquire additional allocation of a renewable water supply. The obligation could have been more precisely recorded as a "Long-Term Installment Payable" – and it still would be in accordance with General Accepted Accounting Principles ("GAAP").

11. The Agreement at issue is not different than the similar arrangements made by other water utilities to acquire additional CAP allocations. For instance, Avra Water Co-op, Inc. ("AVRA") must make annual payments of \$115,000 to CAWCD for five years starting January 2008.<sup>13</sup> This was described in Decision No. 69681 (June 28, 2007). CWCGV is not aware of any Commission approval for this arrangement under A.R.S. §§ 40-301 and 40-302, nor is it aware of any instance where the Commission has approved agreements with CAWCD for additional allocations of CAP water.

12. The Agreement at issue is not a bond or a note. It is also not an evidence of indebtedness under A.R.S. §§ 40-301 or 40-302. This is because – under the doctrine of *ejusdem generis* – an evidence of indebtedness must be similar to a bond or a note to require approval under those statutes.<sup>14</sup> Should CWCGV decide not to go forward with securing the additional CAP allocation, CWCGV understands and believes its assets will not be subject to a lien by CAWCD. Therefore the Company believes it needed no Commission authority to enter into the Agreement.

13. Further, CWCGV must pay for past CAP M&I capital charges in order to receive the additional 1,521-acre-foot allocation of CAP water. This is because the Federal Reclamation Laws, together with the Repayment Contract and Subcontract, require that U.S. DOI be repaid for the CAP and that CWCGV pay CAWCD for past capital charges (so that U.S. DOI may be reimbursed). CWCGV did so to advance the important policy goal of procuring renewable supplies

<sup>13</sup> Avra Water received an additional 808 acre-feet per year pursuant to the re-allocation as announced in Central Arizona Project (CAP), Arizona; Water Allocations, 71 Fed. Reg. 50449 – 50452 (August 25, 2006) and per the AWSA at § 104(b).

<sup>14</sup> See e.g. *Wilderness World, Inc. v. Dept. of Rev.*, 182 Ariz. 196, 199-200, 895 P.2d 108, 111-12 (1995).

1 of water and lessening dependence on groundwater for future needs. In short, CWCGV had no  
2 choice but to pay for past capital charges in one of two ways and chose to do so in a way it felt it  
3 could best afford.

4 14. For all of the above reasons, CWCGV believes the Agreement is not a debt  
5 requiring approval under A.R.S. §§ 40-301 and 40-302. CWCGV requests the Commission find  
6 that the Agreement is not an evidence of indebtedness and approval is not needed.

7 15. In the alternative, should the Commission find the Agreement to require approval  
8 under A.R.S. §§ 40-301 and 40-302, CWCGV requests the Commission approve the Agreement  
9 retroactive to November 21, 2007 as being in the public interest. As state above, CWCGV must  
10 have contracted with CAWCD and provide for payment of past M&I water service capital charges  
11 in order to receive its additional allocation of CAP water. To acquire its 1,521 acre-feet additional  
12 allocation is in accordance with the statewide policy to acquire renewable sources of water and  
13 lessen dependence on groundwater. If the Commission were to reject the Agreement, then the  
14 Agreement would be void. Consequently, CWCGV's subcontract with CAWCD would not be in  
15 effect and CWCGV would lose its additional allocation of 1,521 acre-feet of CAP water. The  
16 Commission, moreover, would upset an arrangement that has been approved by a court of  
17 competent jurisdiction and is no longer subject to review under A.R.S. § 48-3734. As a matter of  
18 fact, the Agreement is part of a larger arrangement between the Company, CAWCD and the United  
19 States. Rejecting the Agreement, in short, denies CWCGV what it is entitled to under federal law.

20 16. Given that a sulfate plume may continue to expand within the Tucson Basin aquifer  
21 CWCGV uses to provide water to customers, CWCGV hopes to use the CAP allocation to  
22 eventually serve customers and is an integral part of its long-term plans. If the Agreement were  
23 rejected, the Company would then seek assistance from the Commission to provide support in  
24 procuring another reasonable source of water. CWCGV hopes, however, that the Agreement is left  
25 undisturbed because CAP water is a renewable supply – and acquiring CAP allocations should be  
26 viewed as being within what the Company understands to be the Commission's clear direction for  
27 utilities to rely less on groundwater and more on other more sustainable supplies.

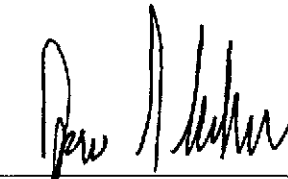
ROSHKA DEWULF & PATTEN, PLC  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET - SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

WHEREFORE, for all of the foregoing reasons, CWCGV requests that the Commission issue an Order:

- (1) Find that the Agreement for payment of past M&I water service capital charges with CAWCD be found not subject to Commission under A.R.S. §§ 40-301 and 40-302; or
- (2) In the alternative, approve the Agreement as being for lawful purposes, which are within the corporate powers of CWCGV, compatible with sound financial practices, which will not impair its ability to serve its customers and is in the public interest.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of December, 2009.

By



Jason D. Gellman  
ROSHKA DEWULF & PATTEN, PLC.  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Original and thirteen copies of the foregoing filed this 22<sup>nd</sup> day of December, 2009, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered this 22<sup>nd</sup> day of December, 2009, to:

Lyn A. Farmer, Esq.  
Chief Administrative Law Judge  
Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Esq.  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
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1 Steve Olea  
2 Director, Utilities Division  
3 Arizona Corporation Commission  
4 1200 West Washington Street  
5 Phoenix, Arizona 85007  
6  
7  
8 Arturo R. Gabaldon  
9 President  
10 Community Water Company of Green Valley  
11 1501 South La Canada  
12 Green Valley, AZ 85614-1600  
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By Debbie Annual



EXHIBIT

"A"



P.O. Box 43020 • Phoenix, AZ 85080-3020  
23636 N. 7th Street • Phoenix, AZ 85024  
623-869-2333 • www.cap-az.com

CWC  
1121  
Control #

November 21, 2007

Mr. Art Gabaldon  
General Manager  
Community Water Company of Green Valley  
1501 S. LaCanada Drive  
Green Valley, Arizona 85614

Subject: Agreement for Payment of Past CAP M&I Water Service Capital Charges

Dear Mr. Gabaldon:

Enclosed for your files is a fully executed original of the Agreement for Payment of Past M&I Water Service Charges. If you have any questions about this matter, please contact Sheila Brennemann at 623-869-2368.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Suzanne K. Ticknor", is written over a horizontal line. To the left of the signature is a small, stylized mark that looks like "for".

for Suzanne K. Ticknor  
Senior Attorney

w:\docs\lots\b\gabaldon.2ltr  
Enclosure  
232.01

**AGREEMENT FOR PAYMENT OF  
PAST CAP M&I WATER SERVICE  
CAPITAL CHARGES  
(INSTALLMENT)**

THIS AGREEMENT (Agreement) is made and entered into this 21<sup>st</sup> day of November, 2007, by and between Central Arizona Water Conservation District (CAWCD) and Community Water Company of Green Valley.

**RECITALS**

A. On or about March 11, 1987, the United States of America (United States) acting through the Secretary of the Interior (Secretary), CAWCD and the Community Water Company of Green Valley entered into a subcontract for the delivery of Central Arizona Project (CAP) municipal and industrial (M&I) priority water, titled "Subcontract Among the United States, the Central Arizona Water Conservation District and the Community Water Company of Green Valley, Providing for Water Service, Central Arizona Project", Contract No. 07-07-30-W0151.

B. On August 25, 2006, the Secretary published his final reallocation decision for Central Arizona Project water. That decision reallocated previously uncontracted for CAP M&I priority water to various M&I water providers in accordance with section 104(b) of the Arizona Water Settlements Act of 2004, Pub. L. 108-451, (the Act) and the recommendation of the Arizona Department of Water Resources. In the final reallocation decision, 1,521 acre-feet of additional CAP M&I priority water was allocated to the Community Water Company of Green Valley.

C. In accordance with the Act, the United States and CAWCD have offered the Community Water Company of Green Valley an amended subcontract for CAP M&I priority water, (Amended Subcontract). The Amended Subcontract provides for an annual entitlement of 2,858 AF, which includes the Community Water Company of Green Valley's original CAP entitlement in the amount of 1,337 AF/year, and the additional entitlement recently reallocated to the Community Water Company of Green Valley in the amount of 1,521 AF/year (the Additional Entitlement).

D. The Amended Subcontract has been fully executed by the United States, CAWCD and the Community Water Company of Green Valley. Article 4.2 of the

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Amended Subcontract provides that it does not become effective until three conditions have been satisfied:

1) The Amended Subcontract is validated by a court of competent jurisdiction, as described in A.R.S. sections 48-3731 through 48-3734;

2) The Secretary publishes in the Federal Register the statement of findings described in Section 207(c)(1) of the Arizona Water Settlements Act, 118 Stat. 3478; and

3) Community Water Company of Green Valley pays or provides for payment of past M&I water service capital charges associated with the Additional Entitlement.

E. CAWCD has given the Community Water Company of Green Valley the option of paying the past M&I water service capital charges associated with the Additional Entitlement in one lump sum by December 1, 2007 (Payment Option 1) or on a five-year levelized payment plan with the first installment due December 1, 2007 (Payment Option 2)

F. Community Water Company of Green Valley has elected Payment Option 2.

G. The Parties desire to make arrangements for the timely payment of past M&I water service capital charges associated with the Additional Entitlement. The Parties also desire to provide for the refund of any such payments in the event that the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as set forth in Section 207(c)(2) of the Act, or such other date as that Section 207(c)(2) is amended to state.

#### **AGREEMENT**

1. Community Water Company of Green Valley agrees to make payment of past M&I water service capital charges associated with the Additional Entitlement in the amounts and on the dates set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit 1.

2. On or before October 25, 2007, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the first installment of past M&I

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water service capital charges associated with the Additional Entitlement, consistent with Exhibit 1.

3. On or before December 1, 2007, Community Water Company of Green Valley shall pay CAWCD the first installment of past M&I water service charges as invoiced by CAWCD.

4. On or before October 25, of each year, from 2008 through and including 2011, CAWCD shall submit a written invoice to the Community Water Company of Green Valley for the annual installment amount due under the levelized payment plan for past M&I water service charges, consistent with Exhibit 1.

5. On or before December 1 of each year, from 2008 through and including 2011, Community Water Company of Green Valley shall pay CAWCD the past M&I water service charges as invoiced by CAWCD.

6. If Community Water Company of Green Valley is in arrears in the payment of any of the installments due CAWCD under this Agreement, Community Water Company of Green Valley shall have no right to delivery of the Additional Entitlement until such delinquent payment is made, plus any applicable late charges pursuant to Paragraph 7 below.

7. Community Water Company of Green Valley shall pay a late payment charge on installments that are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment.

8. If the Secretary does not publish a statement of findings under section 207(c)(1) of the Act by December 31, 2007, as necessitated by Section 207(c)(2) of the Act, or by such other date established by that Section 207(c)(2) of the Act under a future

amendment, then CAWCD shall refund the first installment of the past M&I water service capital charges paid by the Community Water Company of Green Valley pursuant to Section 2 of this Agreement, with interest accrued at the prevailing local government investment pool rate, to the Community Water Company of Green Valley on or before sixty days after such date.

9. Governing Law, Forum. This Agreement shall be governed by the law of Arizona. The forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement shall be Maricopa County, Arizona.

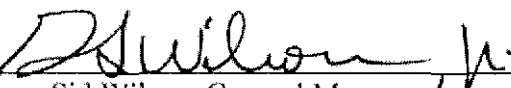
10. Integration. All rights and obligations of the parties shall be governed by the terms of this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be construed as consent to any suit or waiver of any defense in a suit brought against the other party in any state or federal court.

11. Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party, without penalty, pursuant to the provisions of A.R.S. § 38-511.

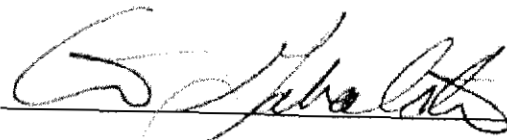
12. Waiver; Severability. The parties agree that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remaining provisions of this Agreement.

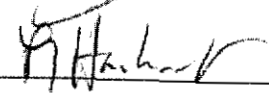
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto.

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

By:   
Sid Wilson, General Manager

COMMUNITY WATER COMPANY  
OF GREEN VALLEY

By: 

Attest: 

**Arizona Water Settlement Act  
Allocation of 1,521 Acre-Feet  
Payment Schedule for  
Community Water Company of Green Valley**

| <u>Payment Due Date</u> | <u>Amount</u> |
|-------------------------|---------------|
| December 1, 2007        | \$222,994.93  |
| December 1, 2008        | \$222,994.93  |
| December 1, 2009        | \$222,994.93  |
| December 1, 2010        | \$222,994.93  |
| December 1, 2011        | \$222,994.93  |



EXHIBIT

"B"

Subcontract No. 07-XX-30-W0489

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

SUBCONTRACT AMONG THE UNITED STATES,  
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,  
AND THE COMMUNITY WATER COMPANY OF GREEN VALLEY  
PROVIDING FOR WATER SERVICE

CENTRAL ARIZONA PROJECT

1. PREAMBLE:

THIS SUBCONTRACT, made this 25<sup>th</sup> day of May, 2007.

In pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as the "Contractor," a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the COMMUNITY WATER COMPANY OF GREEN VALLEY, hereinafter referred to as the "Subcontractor," with its principal place of business in Green Valley, Arizona;

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

WHEREAS, the Colorado River Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary of the Interior shall construct, operate, and maintain the Central Arizona Project; and

WHEREAS, pursuant to the provisions of Arizona Revised Statutes §§ 48-3701, *et seq.*, the Contractor has been organized with the power to enter into a contract or contracts with the Secretary of the Interior to accomplish the purposes of Arizona Revised Statutes, §§ 48-3701, *et seq.*; and

WHEREAS, pursuant to Section 304(b)(1) of the Colorado River Basin Project Act, the Secretary of the Interior has determined that it is necessary to effect repayment of the cost of constructing the Central Arizona Project pursuant to a master contract and that the United States, together with the Contractor, shall be a party to contracts that are in conformity with and subsidiary to the master contract; and

WHEREAS, the United States and the Contractor entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "Repayment Contract," a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof, whereby the Contractor agrees to repay to the United States the reimbursable costs of the Central Arizona Project allocated to the Contractor; and

WHEREAS, the Subcontractor is in need of a water supply and desires to subcontract with the United States and the Contractor for water service from water supplies available under the Central Arizona Project; and

1                   **WHEREAS**, upon completion of the *Central Arizona Project*, water shall be  
2 available for delivery to the Subcontractor;

3                   **NOW THEREFORE**, in consideration of the mutual and dependent  
4 covenants herein contained, it is agreed as follows:

5                   **3.       DEFINITIONS:**

6                   Definitions included in the Repayment Contract are applicable to this  
7 subcontract; provided, however, that the terms "Agricultural Water" or "Irrigation Water"  
8 shall mean water used for the purposes defined in the Repayment Contract on tracts of  
9 land operated in units of more than 5 acres. The first letters of terms so defined are  
10 capitalized herein. As heretofore indicated, a copy of the Repayment Contract is  
11 attached as Exhibit "A." In addition, the following definitions shall apply to this  
12 subcontract:

13                   (a)       "Available CAP Supply" shall mean for any given Year all Fourth  
14 Priority Water available for delivery through the Central Arizona Project, water available  
15 from CAP dams and reservoirs other than Modified Roosevelt Dam, and return flows  
16 captured by the Secretary for CAP use.

17                   (b)       "Fourth Priority Water" shall mean Colorado River water available  
18 for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to  
19 contracts, Secretarial reservations, perfected rights, and other arrangements between  
20 the United States and water users in the State entered into or established subsequent to  
21 September 30, 1968, for use on Federal, State, or privately owned lands in the State (for  
22 a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2), after  
23 first providing for the delivery of water under 43 U.S.C. §1524(e), pursuant to the  
24 Repayment Contract for the delivery of Colorado River water for the CAP including use  
25 of Colorado River water on Indian lands.  
26

1                   4.       DELIVERY OF WATER:

2                   4.1    Obligations of the United States. Subject to the terms, conditions,  
3 and provisions set forth herein and in the Repayment Contract, during such periods as it  
4 operates and maintains the Project Works, the United States shall deliver Project Water  
5 for M&I use by the Subcontractor. The United States shall use all reasonable diligence  
6 to make available to the Subcontractor the quantity of Project Water specified in the  
7 schedule submitted by the Subcontractor in accordance with Article 4.4. After transfer of  
8 OM&R to the Operating Agency, the United States shall make deliveries of Project Water  
9 to the Operating Agency which shall make subsequent delivery to the Subcontractor as  
10 provided herein.

11                   4.2    Term of Subcontract. This subcontract shall become effective upon  
12 the later of: (i) the date on which it is confirmed as provided for in Article 6.12; (ii) the  
13 date on which the Secretary of the Interior publishes in the Federal Register the  
14 statement of findings described in section 207(c)(1) of the Arizona Water Settlements  
15 Act, 118 Stat. 3478; and (iii) the date on which the Subcontractor has paid or provided  
16 for payment of past M&I water service capital charges as required by the Contractor.  
17 This subcontract shall be for permanent service as that term is used in Section 5 of the  
18 Boulder Canyon Project Act of 1928, 43 U.S.C. §617d. Project Water shall be delivered  
19 under the terms of this subcontract for a period of 100 years beginning January 1 of the  
20 Year following that in which the subcontract becomes effective; provided, that this  
21 subcontract may be renewed upon written request by the Subcontractor upon terms and  
22 conditions of renewal to be agreed upon not later than 1 year prior to the expiration of  
23 this subcontract; and provided, further, that such terms and conditions shall be  
24 consistent with Article 9.9 of the Repayment Contract.

25       \* \* \* \*

26       \* \* \* \*

1                   4.3   Conditions Relating to Delivery and Use. Delivery and use of water  
2 under this subcontract is conditioned on the following, and the Subcontractor hereby  
3 agrees that:

4                   (a)   All uses of Project Water and Return Flow shall be consistent  
5 with Arizona water law unless such law is inconsistent with the Congressional directives  
6 applicable to the Central Arizona Project.

7                   (b)   The system or systems through which water for Agricultural,  
8 M&I (including underground storage), and Miscellaneous purposes is conveyed after  
9 delivery to the Subcontractor shall consist of pipelines, canals, distribution systems, or  
10 other conduits provided and maintained with linings adequate in the Contracting Officer's  
11 judgment to prevent excessive conveyance losses.

12                   (c)   The Subcontractor shall not pump, or within its legal  
13 authority, permit others to pump ground water from within the exterior boundaries of the  
14 Subcontractor's service area, which has been delineated on a map filed with the Con-  
15 tractor and approved by the Contractor and the Contracting Officer, for use outside of  
16 said service area unless such pumping is permitted under Title 45, Chapter 2, Arizona  
17 Revised Statutes, as it may be amended from time to time, and the Contracting Officer,  
18 the Contractor, and the Subcontractor shall agree, or shall have previously agreed, that  
19 a surplus of ground water exists and drainage is or was required; provided, however,  
20 that such pumping may be approved by the Contracting Officer and the Contractor, and  
21 approval shall not be unreasonably withheld, if such pumping is in accord with the Basin  
22 Project Act and upon submittal by the Subcontractor of a written certification from the  
23 Arizona Department of Water Resources or its successor agency that the pumping and  
24 transportation of ground water is in accord with Title 45, Chapter 2, Arizona Revised  
25 Statutes, as it may be amended from time to time.

26

1 (d) The Subcontractor shall not sell, lease, exchange, forbear or  
2 otherwise transfer Project Water; provided, however, that this does not prohibit  
3 exchanges of Project Water within the State of Arizona covered by separate  
4 agreements; and provided, further, that this does not prohibit effluent exchanges with  
5 Indian tribes pursuant to Article 6.2; and provided, further, that this does not prohibit the  
6 resale or exchange of Project Water within the State of Arizona pursuant to Subarticle  
7 4.3(e).

8 (e)(i) Project Water scheduled for delivery in any Year under this  
9 subcontract may be used by the Subcontractor or resold, or exchanged by the  
10 Subcontractor pursuant to appropriate agreements approved by the Contracting Officer  
11 and the Contractor. If said water is resold or exchanged by the Subcontractor for an  
12 amount in excess of that which the Subcontractor is obligated to pay under this  
13 subcontract, the excess amount shall be paid forthwith by the Subcontractor to the  
14 Contractor for application against the Contractor's Repayment Obligation to the United  
15 States; provided, however, that the Subcontractor shall be entitled to recover actual  
16 costs of transportation, treatment, and distribution, including but not limited to capital  
17 costs and OM&R costs.

18 (ii) Project Water scheduled for delivery in any Year under  
19 this subcontract that cannot be used, resold, or exchanged by the Subcontractor may be  
20 made available by the Contracting Officer and Contractor to other users. If such Project  
21 Water is sold to or exchanged with other users, the Subcontractor shall be relieved of its  
22 payments hereunder only to the extent of the amount paid to the Contractor by such  
23 other users, but not to exceed the amount the Subcontractor is obligated to pay under  
24 this subcontract for said water.

25 (iii) In the event the Subcontractor or the Contracting  
26 Officer and the Contractor are unable to sell any portion of the Subcontractor's Project

1 Water scheduled for delivery and not required by the Subcontractor, the Subcontractor  
2 shall be relieved of the pumping energy portion of the OM&R charges associated with  
3 the undelivered water as determined by the Contractor.

4 (f) Notwithstanding any other provision of this subcontract,  
5 Project Water shall not be delivered to the Subcontractor unless and until the  
6 Subcontractor has obtained final environmental clearance from the United States for the  
7 system or systems through which Project Water is to be conveyed after delivery to the  
8 Subcontractor at the Subcontractor's Project turnout(s). Such system(s) shall include all  
9 pipelines, canals, distribution systems, treatment, storage, and other facilities through or  
10 in which Project Water is conveyed, stored, or treated after delivery to the Subcontractor  
11 at the Subcontractor's Project turnout(s). In each instance, final environmental  
12 clearance will be based upon a review by the United States of the Subcontractor's plans  
13 for taking and using Project Water and will be given or withheld by the United States in  
14 accordance with the Final Environmental Impact Statement -- Water Allocations and  
15 Water Service Contracting (FES 82-7, filed March 19, 1982) and the National  
16 Environmental Policy Act of 1969 (83 Stat. 852). Any additional action(s) required on  
17 behalf of the Subcontractor in order to obtain final environmental clearance from the  
18 United States will be identified to the Subcontractor by the United States, and no Project  
19 Water shall be delivered to the Subcontractor unless and until the Subcontractor has  
20 completed all such action(s) to the satisfaction of the United States.

21 4.4 Procedure for Ordering Water.

22 (a) At least 15 months prior to the date the Secretary expects to  
23 issue the Notice of Completion of the Water Supply System, or as soon thereafter as is  
24 practicable, the Contracting Officer shall announce by written notice to the Contractor the  
25 amount of Project Water available for delivery during the Year in which said Notice of  
26 Completion is issued (initial Year of water delivery) and during the following Year. Within



1 30 days of receiving such notice, the Contractor shall issue a notice of availability of  
2 Project Water to the Subcontractor. The Subcontractor shall, within a reasonable period  
3 of time as determined by the Contractor, submit a written schedule to the Contractor and  
4 the Contracting Officer showing the quantity of water desired by the Subcontractor  
5 during each month of said initial Year and the following Year. The Contractor shall notify  
6 the Subcontractor by written notice of the Contractor's action on the requested schedule  
7 within 2 months of the date of receipt of such request.

8 (b) The amounts, times, and rates of delivery of Project Water to  
9 the Subcontractor during each Year subsequent to the Year following said initial Year of  
10 water delivery shall be in accordance with a water delivery schedule for that Year. Such  
11 schedule shall be determined in the following manner:

12 (i) On or before June 1 of each Year beginning with the  
13 Year following the initial Year of water delivery pursuant to this subcontract, the  
14 Contracting Officer shall announce the amount of Project Water available for delivery  
15 during the following Year in a written notice to the Contractor. In arriving at this  
16 determination, the Contracting Officer, subject to the provisions of the Repayment  
17 Contract, shall use his best efforts to maximize the availability and delivery of Arizona's  
18 full entitlement of Colorado River water over the term of this subcontract. Within 30 days  
19 of receiving said notice, the Contractor shall issue a notice of availability of Project Water  
20 to the Subcontractor.

21 (ii) On or before October 1 of each Year beginning with  
22 the Year following said initial Year of water delivery, the Subcontractor shall submit in  
23 writing to the Contractor and the Contracting Officer a water delivery schedule indicating  
24 the amounts of Project Water desired by the Subcontractor during each month of the  
25 following Year along with a preliminary estimate of Project Water desired for the  
26 succeeding 2 years.

1 (iii) Upon receipt of the schedule, the Contractor and the  
2 Contracting Officer shall review it and, after consultation with the Subcontractor, shall  
3 make only such modifications to the schedule as are necessary to ensure that the  
4 amounts, times, and rates of delivery to the Subcontractor are consistent with the  
5 delivery capability of the Project, considering, among other things, the availability of  
6 water and the delivery schedules of all subcontractors; provided, that this provision shall  
7 not be construed to reduce annual deliveries to the Subcontractor.

8 (iv) On or before November 15 of each Year beginning  
9 with the Year following said initial Year of water delivery, the Contractor shall determine  
10 and furnish to the Subcontractor and the Contracting Officer the water delivery schedule  
11 for the following Year which shall show the amount of water to be delivered to the  
12 Subcontractor during each month of that Year, contingent upon the Subcontractor  
13 remaining eligible to receive water under all terms contained herein.

14 (c) The monthly water delivery schedules may be amended upon  
15 the Subcontractor's written request to the Contractor. Proposed amendments shall be  
16 submitted by the Subcontractor to the Contractor no later than 15 days before the  
17 desired change is to become effective, and shall be subject to review and modification in  
18 like manner as the schedule. The Contractor shall notify the Subcontractor and the  
19 Contracting Officer of its action on the Subcontractor's requested schedule modification  
20 within 10 days of the Contractor's receipt of such request.

21 (d) The Contractor and the Subcontractor shall hold the United  
22 States, its officers, agents, and employees, harmless on account of damage or claim of  
23 damage of any nature whatsoever arising out of or connected with the actions of the  
24 Contractor regarding water delivery schedules furnished to the Subcontractor.

25 (e) In no event shall the Contracting Officer or the Contractor be  
26 required to deliver to the Subcontractor from the Water Supply System in any one month

1 a total amount of Project Water greater than eleven percent (11%) of the Subcontractor's  
2 maximum entitlement; provided, however, that the Contracting Officer may deliver a  
3 greater percentage in any month if such increased delivery is compatible with the overall  
4 delivery of Project Water to other subcontractors as determined by the Contracting  
5 Officer and the Contractor and if the Subcontractor agrees to accept such increased  
6 deliveries.

7 4.5 Points of Delivery--Measurement and Responsibility for Distribution  
8 of Water.

9 (a) The water to be furnished to the Subcontractor pursuant to  
10 this subcontract shall be delivered at turnouts to be constructed by the United States at  
11 such point(s) on the Water Supply System as may be agreed upon in writing by the  
12 Contracting Officer and the Contractor, after consultation with the Subcontractor.

13 (b) Unless the United States and the Subcontractor agree by  
14 contract to the contrary, the Subcontractor shall construct and install, at its sole cost and  
15 expense, connection facilities required to take and convey the water from the turnouts to  
16 the Subcontractor's service area. The Subcontractor shall furnish, for approval of the  
17 Contracting Officer, drawings showing the construction to be performed by the  
18 Subcontractor within the Water Supply System right-of-way 6 months before starting said  
19 construction. The facilities may be installed, operated, and maintained on the Water  
20 Supply System right-of-way subject to such reasonable restrictions and regulations as to  
21 type, location, method of installation, operation, and maintenance as may be prescribed  
22 by the Contracting Officer.

23 (c) All water delivered from the Water Supply System shall be  
24 measured with equipment furnished and installed by the United States and operated and  
25 maintained by the United States or the Operating Agency. Upon the request of the  
26 Subcontractor or the Contractor, the accuracy of such measurements shall be

1 investigated by the Contracting Officer or the Operating Agency, Contractor, and  
2 Subcontractor, and any errors which may be mutually determined to have occurred  
3 therein shall be adjusted; provided, that in the event the parties cannot agree on the  
4 required adjustment, the Contracting Officer's determination shall be conclusive.

5 (d) Neither the United States, the Contractor, nor the Operating  
6 Agency shall be responsible for the control, carriage, handling, use, disposal, or  
7 distribution of Project Water beyond the delivery point(s) agreed to pursuant to Sub-  
8 article 4.5(a). The Subcontractor shall hold the United States, the Contractor, and the  
9 Operating Agency harmless on account of damage or claim of damage of any nature  
10 whatsoever for which there is legal responsibility, including property damage, personal  
11 injury, or death arising out of or connected with the Subcontractor's control, carriage,  
12 handling, use, disposal, or distribution of such water beyond said delivery point(s).

13 4.6 Temporary Reductions. In addition to the right of the United States  
14 under Subarticle 8.3(a)(iv) of the Repayment Contract temporarily to discontinue or  
15 reduce the amount of water to be delivered, the United States or the Operating Agency  
16 may, after consultation with the Contractor, temporarily discontinue or reduce the  
17 quantity of water to be furnished to the Subcontractor as herein provided for the  
18 purposes of investigation, inspection, maintenance, repair, or replacement of any of the  
19 Project facilities or any part thereof necessary for the furnishing of water to the  
20 Subcontractor, but so far as feasible the United States or the Operating Agency shall  
21 coordinate any such discontinuance or reduction with the Subcontractor and shall give  
22 the Subcontractor due notice in advance of such temporary discontinuance or reduction,  
23 except in case of emergency, in which case no notice need be given. Neither the United  
24 States, its officers, agents, and employees, nor the Operating Agency, its officers,  
25 agents, and employees, shall be liable for damages when, for any reason whatsoever,  
26 any such temporary discontinuance or reduction in delivery of water occurs. If any such

1 discontinuance or temporary reduction results in deliveries to the Subcontractor of less  
2 water than what has been paid for in advance, the Subcontractor shall be entitled to be  
3 reimbursed for the appropriate proportion of such advance payments prior to the date of  
4 the Subcontractor's next payment of water service charges or the Subcontractor may be  
5 given credit toward the next payment of water charges if the Subcontractor should so  
6 desire.

7 4.7 Priority in Case of Shortage. On or before June 1 of each Year,  
8 the Secretary shall announce the Available CAP Supply for the following Year in a  
9 written notice to the Contractor.

10 (a) Prior to January 1, 2044, a time of shortage shall exist in any  
11 Year in which the Available CAP Supply for that Year is insufficient to satisfy all of the  
12 entitlements set forth in subparagraphs (i) through (iii) below:

13 (i) Three hundred forty-three thousand seventy-nine  
14 (343,079) acre-feet of CAP Indian Priority Water;

15 (ii) Six hundred thirty-eight thousand eight hundred  
16 twenty-three (638,823) acre-feet of CAP M&I Priority  
17 Water; and  
18

19 (iii) Up to one hundred eighteen (118) acre-feet of CAP  
20 M&I Priority Water converted from CAP NIA Priority  
21 Water under the San Tan Irrigation District's CAP  
22 Subcontract.  
23

24 (b) On or after January 1, 2044, a time of shortage shall exist in  
25 any Year in which the Available CAP Supply for that Year is insufficient to satisfy all of  
26 the entitlements as set forth in subparagraphs (i) through (iv) below:

- 1 (i) Three hundred forty-three thousand seventy-nine  
2 (343,079) acre-feet of CAP Indian Priority Water;  
3  
4 (ii) Six hundred thirty-eight thousand eight hundred  
5 twenty-three (638,823) acre-feet of CAP M&I Priority  
6 Water;  
7  
8 (iii) Up to forty-seven thousand three hundred three  
9 (47,303) acre-feet of CAP M&I Priority Water  
10 converted from CAP NIA Priority Water pursuant to the  
11 Hohokam Agreement; and  
12  
13 (iv) Up to one hundred eighteen (118) acre-feet of CAP  
14 M&I Priority Water converted from CAP NIA Priority  
15 Water under the San Tan Irrigation District's CAP  
16 Subcontract.  
17  
18 (c) Initial distribution of water in time of shortage.  
19  
20 (i) If the Available CAP Supply is equal to or less than  
21 eight hundred fifty-three thousand seventy-nine  
22 (853,079) acre-feet, then 36.37518% of the Available  
23 CAP Supply shall be available for delivery as CAP  
24 Indian Priority Water and the remainder shall be  
25 available for delivery as CAP M&I Priority Water.  
26  
27 (ii) If the Available CAP Supply is greater than eight  
28 hundred fifty-three thousand seventy-nine (853,079)  
29 acre-feet, then the quantity of water available for

delivery as CAP Indian Priority Water shall be determined in accordance with the following equation and the remainder shall be available for delivery as CAP M&I Priority Water:

$$I = \{[32,770 \div (E - 853,079)] \times W\} + (343,079 - \{[32,770 \div (E - 853,079)] \times E\})$$

where

I = the quantity of water available for delivery as CAP Indian Priority Water

E = the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraphs 4.7(a) or (b), whichever is applicable; and

W = the Available CAP Supply

*Example A.* If, before January 1, 2044, the sum of the entitlements to CAP Indian Priority Water and CAP M&I Priority Water as described in subparagraph 4.7(a) is nine hundred eighty-one thousand nine hundred two (343,079 + 638,823 + 0) acre-feet, then the quantity of water available for delivery as CAP Indian Priority Water would be ninety-three thousand three hundred three (93,303) acre-feet plus 25.43800% of the Available CAP Supply.

1           *Example B.* If, after January 1, 2044, the sum of the entitlements to CAP  
2           Indian Priority Water and CAP M&I Priority Water as described in  
3           subparagraph 4.7(b) is one million twenty-nine thousand three hundred  
4           twenty-three (1,029,323) acre-feet ( $343,079 + 638,823 + 47,303 + 118$ ),  
5           then the quantity of water available for delivery as CAP Indian Priority  
6           Water would be one hundred fifty-one thousand six hundred ninety-one  
7           (151,691) acre-feet plus 18.59354% of the Available CAP Supply.  
8

9           (d) In time of shortage unscheduled CAP Water shall be  
10          redistributed as follows:

- 11                           (i) Any water available for delivery as CAP Indian Priority  
12                           Water that is not scheduled for delivery pursuant to  
13                           contracts, leases or exchange agreements for the  
14                           delivery of CAP Indian Priority Water shall become  
15                           available for delivery as CAP M&I Priority Water.  
16  
17                           (ii) CAP M&I Priority Water shall be distributed among  
18                           those entities with contracts for the delivery of CAP  
19                           M&I Priority Water in a manner determined by the  
20                           Secretary and the CAP Operating Agency in  
21                           consultation with M&I water users to fulfill all delivery  
22                           requests to the greatest extent possible. Any water  
23                           available for delivery as CAP M&I Priority Water that is  
24                           not scheduled for delivery pursuant to contracts,  
25                           leases or exchange agreements for the delivery of  
26



CAP M&I Priority Water shall become available for delivery as CAP Indian Priority Water.

(e) Any water remaining after all requests for delivery of CAP Indian Priority Water and CAP M&I Priority Water have been satisfied shall become available for delivery as CAP NIA Priority Water.

(f) Nothing in this paragraph 4.7 shall be construed to allow or authorize any CAP Contractor or CAP Subcontractor to receive, pursuant to such contracts, CAP water in amounts greater than such contractor's entitlement.

#### 4.8 Secretarial Control of Return Flow.

(a) The Secretary reserves the right to capture all Return Flow flowing from the exterior boundaries of the Contractor's Service Area as a source of supply and for distribution to and use of the Central Arizona Project to the fullest extent practicable. The Secretary also reserves the right to capture for Project use Return Flow which originates or results from water contracted for from the Central Arizona Project within the boundaries of the Contractor's Service Area if, in his judgment, such Return Flow is not being put to a beneficial use. The Subcontractor may recapture and reuse or sell its Return Flow; provided, however, that such Return Flow may not be sold for use outside Maricopa, Pinal, and Pima Counties; and provided, further, that this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2. The Subcontractor shall, at least 60 days in advance of any proposed sale of such water, furnish the following information in writing to the Contracting Officer and the Contractor:

\* \* \* \*

\* \* \* \*

- (i) The name and address of the prospective buyer.
- (ii) The location and proposed use of the Return Flow.
- (iii) The price to be charged for the Return Flow.

(b) The price charged for the Return Flow may cover the cost incurred by the Subcontractor for Project Water plus the cost required to make the Return Flow usable. If the price received for the Return Flow is greater than the costs incurred by the Subcontractor, as described above, the excess amount shall be forthwith returned by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States. Costs required to make Return Flow usable shall include but not be limited to capital costs and OM&R costs including transportation, treatment, and distribution, and the portion thereof that may be retained by the Subcontractor shall be subject to the advance approval of the Contractor and the Contracting Officer.

(c) Any Return Flow captured by the United States and determined by the Contracting Officer and the Contractor to be suitable and available for use by the Subcontractor may be delivered by the United States or Operating Agency to the Subcontractor as a part of the water supply for which the Subcontractor subcontracts hereunder and such water shall be accounted and paid for pursuant to the provisions hereof.

(d) All capture, recapture, use, reuse, and sale of Return Flow under this article shall be in accord with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

1           4.9   Water and Air Pollution Control. The Subcontractor, in carrying out  
2 this subcontract, shall comply with all applicable water and air pollution laws and  
3 regulations of the United States and the State of Arizona and shall obtain all required  
4 permits or licenses from the appropriate Federal, State, or local authorities.

5           4.10   Quality of Water. The operation and maintenance of Project  
6 facilities shall be performed in such manner as is practicable to maintain the quality of  
7 water made available through such facilities at the highest level reasonably attainable as  
8 determined by the Contracting Officer. Neither the United States, the Contractor, nor the  
9 Operating Agency warrants the quality of water and is under no obligation to construct or  
10 furnish water treatment facilities to maintain or better the quality of water. The  
11 Subcontractor waives its right to make a claim against the United States, the Operating  
12 Agency, the Contractor, or another subcontractor because of changes in water quality  
13 caused by the commingling of Project Water with other water.

14           4.11   Exchange Water.

15           (a)   Where the Contracting Officer determines the Subcontractor  
16 is physically able to receive Colorado River mainstream water in exchange for or in  
17 replacement of existing supplies of water from surface sources other than the Colorado  
18 River, the Contracting Officer may require that the Subcontractor accept said  
19 mainstream water in exchange for or in replacement of said existing supplies pursuant to  
20 the provisions of Section 304(d) of the Basin Project Act; provided, however, that a sub-  
21 contractor on the Project aqueduct shall not be required to enter into exchanges in which  
22 existing supplies of water from surface sources are diverted for use by other  
23 subcontractors downstream on the Project aqueduct.

(b) If, in the event of shortages, the Subcontractor has yielded water from other surface water sources in exchange for Colorado River mainstream water supplied by the Contractor or the Operating Agency, the Subcontractor shall have first priority against other users supplied with Project Water that have not yielded water from other surface water sources but only in quantities adequate to replace the water so yielded.

#### 4.12 Entitlement to Project M&I Water.

(a) The Subcontractor is entitled to take a maximum of 2,858 acre-feet of Project Water for M&I uses including but not limited to underground storage.

(b) If at any time during the term of this subcontract there is available for allocation additional M&I Project Water, or Agricultural Water converted to M&I use, it shall be delivered to the Subcontractor at the same water service charge per acre-foot and with the same priority as other M&I Water, upon execution or amendment of an appropriate subcontract among the United States, the Contractor, and the Subcontractor and payment of an amount equal to the acre-foot charges previously paid by other subcontractors pursuant to Article 5.2 hereof plus interest. In the case of Agricultural Water conversions, the payment shall be reduced by all previous payments of agricultural capital charges for each acre-foot of water converted. The interest due shall be calculated for the period between issuance of the Notice of Completion of the Water Supply System and execution or amendment of the subcontract using the weighted interest rate received by the Contractor on all investments during that period.

#### 4.13 Delivery of Project Water Prior to Completion of Project Works.

Prior to the date of issuance of the Notice of Completion of the Water Supply System by

the Secretary, water may be made available for delivery by the Secretary on a "when available" basis at a water rate and other terms to be determined by the Secretary after consultation with the Contractor.

5. PAYMENTS:

5.1 Water Service Charges for Payment of Operation, Maintenance, and Replacement Costs. Subject to the provisions of Article 5.4 hereof, the Subcontractor shall pay in advance for Project OM&R costs estimated to be incurred by the United States or the Operating Agency. At least 15 months prior to first delivery of Project Water, or as soon thereafter as is practicable, the Contractor shall furnish the Subcontractor with an estimate of the Subcontractor's share of OM&R costs to the end of the initial Year of water delivery and an estimate of such costs for the following Year. Within a reasonable time of the receipt of said estimates, as determined by the Contractor, but prior to the delivery of water, the Subcontractor shall advance to the Contractor its share of such estimated costs to the end of the initial month of water delivery and without further notice or demand shall on or before the first day of each succeeding month of the initial Year of water delivery and the following Year advance to the Contractor in equal monthly installments the Subcontractor's share of such estimated costs. Advances of monthly payments for each subsequent Year shall be made by the Subcontractor to the Contractor on the basis of annual estimates to be furnished by the Contractor on or before June 1 preceding each said subsequent Year and the advances of payments for said estimated costs shall be due and payable in equal monthly payments on or before the first day of each month of the subsequent Year. Differences between actual OM&R costs and estimated OM&R costs shall be determined by the

1 Contractor and shall be adjusted in the next succeeding annual estimates; provided,  
2 however, that if in the opinion of the Contractor the amount of any annual OM&R  
3 estimate is likely to be insufficient to cover the above-mentioned costs during such  
4 period, the Contractor may increase the annual estimate of the Subcontractor's OM&R  
5 costs by written notice thereof to the Subcontractor, and the Subcontractor shall forthwith  
6 increase its remaining monthly payments in such Year to the Contractor by the amount  
7 necessary to cover the insufficiency. All estimates of OM&R costs shall be accompanied  
8 by data and computations relied on by the Contractor in determining the amounts of the  
9 estimated OM&R costs and shall be subject to joint review by the Subcontractor and the  
10 Contractor.  
11 Contractor.

12 5.2 M&I Water Service Charges.

13 (a) Subject to the provisions of Article 5.4 hereof and in addition  
14 to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance  
15 of the delivery of Project M&I Water by the United States or the Operating Agency, make  
16 payment to the Contractor in equal semiannual installments of an M&I Water service  
17 capital charge based on a maximum entitlement of 2,858 acre-feet per year multiplied by  
18 the rate established by the Contractor for that year.  
19

20 (b) The M&I Water service capital charge may be adjusted  
21 periodically by the Contractor as a result of repayment determinations provided for in the  
22 Repayment Contract and to reflect all sources of revenue, but said charge per acre-foot  
23 shall not be greater than the amount required to amortize Project capital costs allocated  
24 to the M&I function and determined by the Contracting Officer to be a part of the  
25 Contractor's Repayment Obligation. Such amortization shall include interest at 3.342  
26

percent per annum. If any adjustment is made in the M&I Water service capital charge, notice thereof shall be given by the Contractor to the United States and to the Subcontractor on or before June 1 of the Year preceding the Year the adjusted charge becomes effective. The M&I Water service capital charge payment for the initial Year shall be advanced to the Contractor in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year; provided, however, that the payment of the initial M&I Water service capital charge shall not be due until the Year in which Project Water is available to the Subcontractor after Notice of Completion of the Water Supply System is issued. Thereafter, for each subsequent Year, payments by the Subcontractor in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by the Contractor in written notices to the Subcontractor.

(c) Payment of all M&I Water service capital and corresponding OM&R charges becoming due hereunder prior to or on the dates stipulated in Articles 5.1 and 5.2 is a condition precedent to receiving M&I Water under this subcontract.

(d) All payments to be made to the Contractor or the United States under Articles 5.1 and 5.2 hereof shall be made by the Subcontractor as such payments fall due from revenues legally available to the Subcontractor for such payment from the sale of water to its water users and from any and all other sources which might be legally available; Provided, That no portion of the general taxing authority of the Subcontractor, nor its general funds, nor funds from ad valorem taxes are obligated by the provisions of this subcontract, nor shall such sources be liable for the payments,

1 contributions, and other costs pursuant to this subcontract, or to satisfy any obligation  
2 hereunder unless duly and lawfully allocated and budgeted for such purpose by the  
3 Subcontractor for the applicable budget year; and Provided, further, That no portion of  
4 *this agreement shall ever be construed to create an obligation superior in lien to or on a*  
5 *parity with the Subcontractor's revenue bonds now or hereafter issued. The*  
6 *Subcontractor shall levy and impose such necessary water service charges and rates*  
7 *and use all the authority and resources available to it to collect all such necessary water*  
8 *service charges and rates in order that the Subcontractor may meet its obligations*  
9 *hereunder and make in full all payments required under this subcontract on or before the*  
10 *date such payments become due.*

12       5.3 Loss of Entitlement. The Subcontractor shall have no right to  
13 delivery of water from Project facilities during any period in which the Subcontractor may  
14 *be in arrears in the payment of any charges due the Contractor. The Contractor may sell*  
15 *to another entity any water determined to be available under the Subcontractor's*  
16 *entitlement for which payment is in arrears; provided, however, that the Subcontractor*  
17 *may regain the right to use any unsold portion of the water determined to be available*  
18 *under the original entitlement upon payment of all delinquent charges plus any*  
19 *difference between the subcontractual obligation and the price received in the sale of the*  
20 *water by the Contractor and payment of charges for the current period.*

23       5.4 Refusal to Accept Delivery. In the event the Subcontractor falls or  
24 refuses in any Year to accept delivery of the quantity of water available for delivery to  
25 and required to be accepted by it pursuant to this subcontract, or in the event the  
26 Subcontractor in any Year fails to submit a schedule for delivery as provided in Article



1 4.4 hereof, said failure or refusal shall not relieve the Subcontractor of its obligation to  
2 make the payments required in this subcontract.

3 5.5 Charge for Late Payments. The Subcontractor shall pay a late  
4 payment charge on installments or charges that are received after the due date. The  
5 late payment charge percentage rate calculated by the Department of the Treasury and  
6 published quarterly in the Federal Register shall be used; provided, that the late  
7 payment charge percentage rate shall not be less than 0.5 percent per month. The late  
8 payment charge percentage rate applied on an overdue payment shall remain in effect  
9 until payment is received. The late payment rate for a 30-day period shall be determined  
10 on the day immediately following the due date and shall be applied to the overdue  
11 payment for any portion of the 30-day period of delinquency. In the case of partial late  
12 payments, the amount received shall first be applied to the late charge on the overdue  
13 payment and then to the overdue payment.  
14  
15

16 6. GENERAL PROVISIONS:

17 6.1 Repayment Contract Controlling. Pursuant to the Repayment  
18 Contract, the United States has agreed to construct and, in the absence of an approved  
19 Operating Agency, to operate and maintain the works of the Central Arizona Project and  
20 to deliver Project Water to the various subcontractors within the Project Service Area;  
21 and the Contractor has obligated itself for the payment of various costs, expenses, and  
22 other amounts allocated to the Contractor pursuant to Article 9 of the Repayment  
23 Contract. The Subcontractor expressly approves and agrees to all the terms presently  
24 set out in the Repayment Contract including Subarticle 8.8(b)(vii) thereof, or as such  
25 terms may be hereafter amended, and agrees to be bound by the actions to be taken  
26

1 and the determinations to be made under that Repayment Contract, except as otherwise  
2 provided herein.

3 6.2 Effluent Exchanges. The Subcontractor may enter into direct  
4 effluent exchanges with Indian entities that have received an allocation of Project Water  
5 and receive all benefits from the exchange.

6 6.3 Notices. Any notice, demand or request authorized or required by  
7 this subcontract shall be deemed to have been given when mailed, postage prepaid, or  
8 delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O.  
9 Box 61470, Boulder City, Nevada 89006-1470, on behalf of the Contractor or  
10 Subcontractor; to the Central Arizona Water Conservation District, P. O. Box 43020,  
11 Phoenix, Arizona 85080, on behalf of the United States or Subcontractor; and to the  
12 Community Water Company of Green Valley, 1501 S. LaCanada Drive, Green Valley,  
13 Arizona 85622-1078, on behalf of the United States or Contractor. The designation of  
14 the addressee or the address may be changed by notice given in the same manner as  
15 provided in this Article for other notices.  
16

17  
18 6.4 Water Conservation Program.

19 (a) While the contents and standards of a given water  
20 conservation program are primarily matters of State and local determination, there is a  
21 strong Federal interest in developing an effective water conservation program because  
22 of this subcontract. The Subcontractor shall develop and implement an effective water  
23 conservation program for all uses of water that is provided from or conveyed through  
24 Federally constructed or Federally financed facilities. That water conservation program  
25  
26

1 shall contain definite goals, appropriate water conservation measures, and time  
2 schedules for meeting the water conservation objectives.

3 (b) A water conservation program, acceptable to the Contractor  
4 and the Contracting Officer, shall be in existence prior to one or all of the following: (1)  
5 service of Federally stored/conveyed water; (2) transfer of operation and maintenance of  
6 the Project facilities to the Contractor or Operating Agency; or (3) transfer of the Project  
7 to an operation and maintenance status. The distribution and use of Federally  
8 stored/conveyed water and/or the operation of Project facilities transferred to the  
9 Contractor shall be consistent with the adopted water conservation program. Following  
10 execution of this subcontract, and at subsequent 5-year intervals, the Subcontractor  
11 shall resubmit the water conservation plan to the Contractor and the Contracting Officer  
12 for review and approval. After review of the results of the previous 5 years and after  
13 consultation with the Contractor, the Subcontractor, and the Arizona Department of  
14 Water Resources or its successor, the Contracting Officer may require modifications in  
15 the water conservation program to better achieve program goals.

16  
17  
18 6.5 Rules, Regulations, and Determinations.

19 (a) The Contracting Officer shall have the right to make, after an  
20 opportunity has been offered to the Contractor and Subcontractor for consultation, rules  
21 and regulations consistent with the provisions of this subcontract, the laws of the United  
22 States and the State of Arizona, to add to or to modify them as may be deemed proper  
23 and necessary to carry out this subcontract, and to supply necessary details of its  
24 administration which are not covered by express provisions of this subcontract. The  
25 Contractor and Subcontractor shall observe such rules and regulations.  
26

1 (b) Where the terms of this subcontract provide for action to be  
2 based upon the opinion or determination of any party to this subcontract, whether or not  
3 stated to be conclusive, said terms shall not be construed as permitting such action to be  
4 predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In  
5 the event that the Contractor or Subcontractor questions any factual determination made  
6 by the Contracting Officer, the findings as to the facts shall be made by the Secretary  
7 only after consultation with the Contractor or Subcontractor and shall be conclusive upon  
8 the parties.  
9

10 6.6 Officials Not to Benefit.

11 (a) No Member of or Delegate to Congress or Resident  
12 Commissioner shall be admitted to any share or part of this subcontract or to any benefit  
13 that may arise herefrom. This restriction shall not be construed to extend to this  
14 subcontract if made with a corporation or company for its general benefit.  
15

16 (b) No official of the Subcontractor shall receive any benefit that  
17 may arise by reason of this subcontract other than as a water user within the Project and  
18 in the same manner as other water users within the Project.

19 6.7 Assignment Limited--Successors and Assigns Obligated. The  
20 provisions of this subcontract shall apply to and bind the successors and assigns of the  
21 parties hereto, but no assignment or transfer of this subcontract or any part or interest  
22 therein shall be valid until approved by the Contracting Officer.  
23

24 6.8 Judicial Remedies Not Foreclosed. Nothing herein shall be  
25 construed (a) as depriving any party from pursuing and prosecuting any remedy in any  
26 appropriate court of the United States or the State of Arizona which would otherwise be

1 available to such parties even though provisions herein may declare that determinations  
2 or decisions of the Secretary or other persons are conclusive or (b) as depriving any  
3 party of any defense thereto which would otherwise be available.

4         6.9 Books, Records, and Reports. The Subcontractor shall establish  
5 and maintain accounts and other books and records pertaining to its financial  
6 transactions, land use and crop census, water supply, water use, changes of Project  
7 works, and to other matters as the Contracting Officer may require. Reports thereon  
8 shall be furnished to the Contracting Officer in such form and on such date or dates as  
9 he may require. Subject to applicable Federal laws and regulations, each party shall  
10 have the right during office hours to examine and make copies of each other's books and  
11 records relating to matters covered by this subcontract.  
12

13         6.10 Equal Opportunity. During the performance of this subcontract, the  
14 Subcontractor agrees as follows:  
15

16                 (a) The Subcontractor shall not discriminate against any  
17 employee or applicant for employment because of race, color, religion, sex, or national  
18 origin. The Subcontractor shall take affirmative action to ensure that applicants are  
19 employed, and that employees are treated during employment without regard to their  
20 race, color, religion, sex, or national origin. Such action shall include, but not be limited  
21 to the following: Employment, upgrading, demotion, or transfer; recruitment or  
22 recruitment advertising; layoff or termination; rates of pay or other forms of  
23 compensation; and selection for training, including apprenticeship. The Subcontractor  
24 agrees to post in conspicuous places, available to employees and applicants for  
25  
26

1 employment, notices to be provided setting forth the provisions of this nondiscrimination  
2 clause.

3 (b) The Subcontractor shall, in all solicitations or advertisements  
4 for employees placed by or on behalf of the Subcontractor, state that all qualified  
5 applicants shall receive consideration for employment without discrimination because of  
6 race, color, religion, sex, or national origin.

7  
8 (c) The Subcontractor shall send to each labor union or  
9 *representative of workers* with which it has a collective bargaining agreement or other  
10 contract or understanding, a notice, to be provided by the Contracting Officer, advising  
11 said labor union or workers' representative of the Subcontractor's commitments under  
12 Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of  
13 the notice in conspicuous places available to employees and applicants for employment.

14  
15 (d) The Subcontractor shall comply with all provisions of  
16 Executive Order No. 11246 of September 24, 1965, as amended, and of the rules,  
17 regulations, and relevant orders of the Secretary of Labor.

18 (e) The Subcontractor shall furnish all information and reports  
19 required by said amended Executive Order and by the rules, regulations, and orders of  
20 the Secretary of Labor, or pursuant thereto, and shall permit access to its books,  
21 records, and accounts by the Contracting Officer and the Secretary of Labor for  
22 purposes of investigation to ascertain compliance with such rules, regulations, and  
23 orders.

24  
25 (f) In the event of the Subcontractor's noncompliance with the  
26 nondiscrimination clauses of this subcontract or with any of such rules, regulations, or

1 orders, this subcontract may be canceled, terminated, or suspended, in whole or in part,  
2 and the Subcontractor may be declared ineligible for further Government contracts in  
3 accordance with procedures authorized in said amended Executive Order and such  
4 other sanctions may be imposed and remedies invoked as provided in said amended  
5 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
6 otherwise provided by law.

7  
8 (g) The Subcontractor shall include the provisions of paragraphs  
9 (a) through (g) in every subcontract or purchase order unless exempted by the rules,  
10 regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said  
11 amended Executive Order, so that such provisions shall be binding upon each  
12 subcontractor or vendor. The Subcontractor shall take such action with respect to any  
13 subcontract or purchase order as may be directed by the Secretary of Labor as a means  
14 of enforcing such provisions, including sanctions for noncompliance; provided, however,  
15 that in the event a Subcontractor becomes involved in, or is threatened with, litigation  
16 with a subcontractor or vendor as a result of such direction, the Subcontractor may  
17 request the United States to enter into such litigation to protect the interest of the United  
18 States.  
19

20 6.11 Title VI, Civil Rights Act of 1964.

21  
22 (a) The Subcontractor agrees that it shall comply with Title VI of  
23 the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or  
24 pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to  
25 that title to the end that, in accordance with Title VI of that Act and the Regulation, no  
26 person in the United States shall, on the grounds of race, color, or national origin be

1 excluded from participation in, be denied the benefits of, or be otherwise subjected to  
2 discrimination under any program or activity for which the Subcontractor receives  
3 financial assistance from the United States and hereby gives assurance that it shall  
4 immediately take any measures to effectuate this agreement.

5 (b) If any real property or structure thereon is provided or  
6 improved with the aid of Federal financial assistance extended to the Subcontractor by  
7 the United States, this assurance obligates the Subcontractor, or in the case of any  
8 transfer of such property, any transferee for the period during which the real property or  
9 structure is used for a purpose involving the provision of similar services or benefits. If  
10 any personal property is so provided, this assurance obligates the Subcontractor for the  
11 period during which it retains ownership or possession of the property. In all other  
12 cases, this assurance obligates the Subcontractor for the period during which the  
13 Federal financial assistance is extended to it by the United States.

14 (c) This assurance is given in consideration of and for the  
15 purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or  
16 other Federal financial assistance extended after the date hereof to the Subcontractor by  
17 the United States, including installment payments after such date on account of  
18 arrangements for Federal financial assistance which were approved before such date.  
19 The Subcontractor recognizes and agrees that such Federal financial assistance shall  
20 be extended in reliance on the representations and agreements made in this assurance,  
21 and that the United States shall reserve the right to seek judicial enforcement of this  
22 assurance. This assurance is binding on the Subcontractor, its successors, transferees,  
23 and assignees.



1           6.12 Confirmation of Subcontract. The Subcontractor shall promptly seek  
2 a final decree of the proper court of the State of Arizona approving and confirming the  
3 subcontract and decreeing and adjudging it to be lawful, valid, and binding on the  
4 Subcontractor. The Subcontractor shall furnish to the United States a certified copy of  
5 such decree and of all pertinent supporting records. This subcontract shall not be  
6 binding on the United States, the Contractor, or the Subcontractor until such final decree  
7 has been entered.  
8

9           6.13 Contingent on Appropriation or Allotment of Funds. The expenditure  
10 or advance of any money or the performance of any work by the United States  
11 hereunder which may require appropriation of money by the Congress or the allotment of  
12 funds shall be contingent upon such appropriation or allotment being made. The failure  
13 of the Congress to appropriate funds or the absence of any allotment of funds shall not  
14 relieve the Subcontractor from any obligation under this subcontract. No liability shall  
15 accrue to the United States in case such funds are not appropriated or allotted.  
16

17           IN WITNESS WHEREOF, the parties hereto have executed this  
18 subcontract No. 07-XX-30-W0489 the day and year first above-written.  
19

20           Legal Review and Approval

20           THE UNITED STATES OF AMERICA

21  
22  
23 By:

*Katherine Ott Verburg*  
Field Solicitor  
Phoenix, Arizona

By:

*Larry Walkowich*  
Acting

Regional Director  
Lower Colorado Region  
Bureau of Reclamation

EXHIBIT

"C"

OPEN MEETING AGENDA ITEM

ORIGINAL



**CAP**  
CENTRAL ARIZONA PROJECT

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P.O. Box 43020

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August 24, 2009

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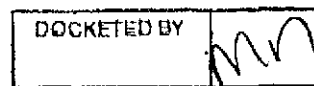
Commissioner Kristen K. Mayes, Chairman  
Commissioner Gary Pierce  
Commissioner Paul Newman  
Commissioner Sandra D. Kennedy  
Commissioner Bob Stump  
Arizona Corporation Commission  
Docket Control  
1200 W. Washington Street, Rm. 108  
Phoenix, Arizona 85007

Arizona Corporation Commission

**DOCKETED**

AUG 24 2009

Subject: Docket No. W-02304A-09-0153



Dear Ladies and Gentlemen:

The purpose of this letter is to provide background relating to the Agreement for Payment of Past CAP M&I Water Service Capital Charges Between the Central Arizona Water Conservation District ("CAWCD") and Community Water Company of Green Valley ("Community Water"), dated November 21, 2007, (the "Payment Agreement"). The Payment Agreement is the subject of ACC Staff's recommendation at line 16 page 5 of the recommended opinion and order in the above referenced docket.

The Payment Agreement arose from the historic CAP Water Settlement, which was approved by Congress as the Arizona Water Settlements Act of 2004, Pub. L. 108-451 (the "Settlements Act"). Among other things, the Settlements Act provided for the Secretary of the Interior ("Secretary") to reallocate to 20 specific water providers within CAP's three-county service area 65,647 acre-feet of CAP M&I water that had not been previously under contract. On August 25, 2006, in accordance with section 104(b) of the Settlements Act and the recommendation of the Arizona Department of Water Resources, the Secretary published his final reallocation decision for CAP water. Furthermore, Section 104(d) of the Settlements Act directed the Secretary to offer amended CAP subcontracts for the additional CAP M&I Priority water.

In the final reallocation decision, 1,521 acre-feet of additional CAP M&I Priority water was allocated to Community Water. In accordance with the Settlements Act, CAWCD and the United States offered Community Water an amended CAP subcontract for an additional 1,521 acre-feet of CAP M&I Priority water (the "Amended Subcontract"). The Amended Subcontract was signed by Community Water, CAWCD and the United States and, pursuant to A.R.S. §48-3731, Community Water's Amended Subcontract was validated by the Superior Court of Pima County on November 15, 2007.

Arizona Corporation Commission  
August 24, 2009  
Page Two

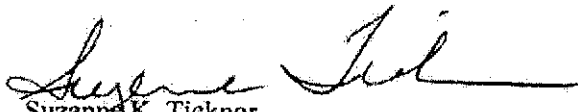
Article 4.2 of the Amended Subcontract provides that it will not become effective until three conditions are satisfied. One of the conditions is that Community Water must pay or provide for payment of the past CAP M&I water service capital charges associated with this new entitlement to CAP M&I priority water. (The past CAP M&I water service capital charges represent the annual CAP capital charges that should have been paid since 1986 but were not because the CAP M&I water was not held under contract by a subcontractor.)

In accordance with the final reallocation decision, all water providers that received an allocation of CAP M&I priority water that was not previously under contract were offered an amended CAP subcontract, and were given an option by CAWCD regarding satisfaction of the condition to pay or provide for payment of past CAP M&I capital charges. These entities had the option to either pay the past M&I capital charges in one lump sum on or before December 1, 2007, or they could elect to pay such charges on a five-year payment plan, with the first installment due on December 1, 2007. All entities were also required to sign an Agreement for Payment of Past CAP M&I Water Service Capital Charges with CAWCD to make arrangements for the timely payment of their past M&I water service capital charges. Execution of the payment agreement was a condition precedent to the effectiveness of the amended CAP subcontracts.

Community Water elected the installment payment option for payment of the past CAP M&I water service capital charges, and, as a condition precedent to the effectiveness of the Amended Subcontract validated by the Superior Court on November 15, 2007, Community Water executed its Payment Agreement on November 21, 2007. If Community Water had not executed the Payment Agreement, its Amended Subcontract would not have become effective.

Thank you for the opportunity to provide this background on Community Water's Payment Agreement. If you have any questions, you may contact me at 623-869-2410.

Sincerely,

  
Suzanne K. Ticknor  
Senior Attorney

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Cc: Jason Gellman, Roshka DeWulf & Patten, PLC

EXHIBIT

"D"

## **CAWCD Policy Regarding the Relinquishment and Transfer of CAP M&I Subcontract Allocations Within the CAP Service Area**

The Board of Directors of the CAWCD recognizes that from time to time a subcontractor may desire to relinquish some or all of its M&I subcontract allocation. The Arizona Department of Water Resources (ADWR) is the state entity with the responsibility to recommend allocations, reallocations and, subsequently, the reassignment of CAP water supplies. The Board recognizes that ADWR has developed a policy and guidelines for such reassignments and pledges to coordinate and cooperate with ADWR in its process.

The Board has adopted this policy to establish the necessary elements required for CAWCD approval of any transfers of CAP subcontract allocations. The CAWCD has a primary interest in ensuring that the financial obligations associated with a CAP subcontract are fulfilled. In addition, the CAWCD wishes to ensure that sound public policy is considered before completing the transfer process. With these considerations in mind, the following elements will guide the CAWCD staff in processing the proposed transfers. Final approval will be by Board action.

1. Any transfer of a CAP M&I subcontract allocation must be accomplished with no profit to the relinquishing entity. All financial transactions must be fully disclosed. The only payment to the relinquishing entity will be made by CAWCD and will consist of reimbursement of CAP capital charges that were paid by that entity plus 5% of that amount as compensation for costs associated with the CAP subcontract. Reimbursement for the Arizona State Land Department will be as provided in A.R.S. § 37-106.01(c). A "cost of money" payment will also be made. Such payment will consist of interest beginning on the date the original payment was received by CAWCD using a simple annual interest rate equal to the weighted average rate earned by CAWCD for that calendar year less 1%. No payment will be made for capital payments associated with any water delivered from October 1, 1993 through the date of relinquishment.

The entity that receives the subcontract allocation will be required to pay CAWCD 1) the amount CAWCD paid to the relinquishing entity with interest from the date payment was made by CAWCD; 2) any outstanding payments due under the subcontract with interest from the due date; and 3) any charges paid by CAWCD to the United States associated with the transfer. Interest paid by the receiving entity will be simple annual interest at a rate equal to the weighted average rate earned by CAWCD for each calendar year or portion of a calendar year.

In those instances where the assignment and transfer is made to a successor-in-interest that will serve the original subcontract service area, payment for certain administrative, legal, or engineering fees may be permitted. CAWCD will review and approve these situations on a case by case basis and will facilitate those financial transactions directly between the involved entities.

2. The ADWR will determine who ultimately is reassigned any relinquished allocations. CAWCD will cooperate and coordinate with ADWR in the reassignment of CAP M&I subcontract allocations.